

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-928973-D3 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Joseph SABO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1895

Joseph SABO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 July 1971, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for twelve months upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck utility on board SS NORMAN LYKES under authority of the document above captioned, on or about 12, 16, 26 April, and 9 May 1971, Appellant was wrongfully absent from the vessel and his duties.

At the hearing, Appellant did not appear. The Administrative Law Judge entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of NORMAN LYKES.

There was no defense.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then entered an order suspending all documents issued to Appellant for a period of twelve months.

The entire decision was served on 1 November 1971. Appeal had already been filed on 27 September 1971.

FINDINGS OF FACT

On all dates in question, Appellant was serving as a deck utility on board SS NORMAN LYKES and acting under authority of his documents.

On 12 April 1971 Appellant was absent from the vessel without authority and failed to perform duties in getting underway, probably from Patras, Greece.

On 16 April 1971, Appellant was absent from the vessel and his duties, place unknown.

On 26 April 1971 Appellant was absent from the vessel and from his duties, place unknown.

On 9 May 1971 Appellant was absent from the vessel and failed to report for securing the ship for sea. The port here was the same as the place of the 26 April offense.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) Appellant's acts were not misconduct since he was not a watchstander, since intoxication was not involved, and there was not misbehavior aboard ship;
- (2) Appellant was fined for each offense by the master; and
- (3) The order is too severe for what Appellant did.

APPEARANCE: Appellant, pro se.

OPINION

I

The first two of Appellant's grounds for appeal are all matters that he could have placed before the Administrative Law Judge at the time of hearing. For what they are worth, they are factual matters that must be presented and heard at the hearing level if they are to be considered on appeal. Appellant waived his opportunity to present them by his failure to appear for the hearing.

In any case it may be pointed out that the absences without authority were misconduct in and of themselves. No matters in aggravation were alleged and none need have been proved.

Further, the fact that statutory penalties were imposed by the master (known at the hearing because of the log records) is irrelevant to this proceeding under R.S. 4450. Such penalties were long available to masters before the 1936 Amendment to R.S. 4450

rendered a seaman's document amenable to suspension for these, among other, offenses.

II

Appellant complained that the order is too severe. The prior record considered at the hearing involved a suspension of two months on probation in 1969 and a suspension of four months ordered in 1970. The instant case was thus Appellant's third brought to hearing in two years.

The order is not inappropriate.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 15 July 1971, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 20th day of October 1972.

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